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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Livingston, et al.  
SERIAL NO: 09/532,687  
FILED: March 22, 2000  
ART UNIT: 1616  
TITLE: MOSS CONTROL COMPOSITION

**ATTN: OFFICE OF PETITIONS**  
**CHARLEMA R. GRANT, ESQ.**

Assistant Commissioner of Patents  
Box DAC  
Washington, D.C. 20231

**RENEWED PETITION FOR REVIVAL  
OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 § CFR 1.137(a) AND/OR  
FOR UNINTENTIONAL ABANDONMENT UNDER 37 C.F.R. § 1.137(b)**

1. Applicant petitions for the revival of the above-identified application. A duplicate of the Notice of Abandonment is attached.
2. If revival is unavailable under 37 § CFR 1.137(a) please consider this petition under 37 § CFR 1.137(b) as unintentional. (See Alternative Venue heading below)

**RECEIVED**

**JUN 28 2002**

**OFFICE OF PETITIONS**

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**CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10**

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

☒ deposited with the United States Postal Service in an envelope addressed to the Commissioner of Patents and Trademarks, Box DAC, Washington, D.C. 20231, with sufficient postage:

37 CFR 1.8(a)

37 CFR 1.10

☒ as first class mail

☐ as "Express Mail Post Office to Addressee" Mailing Label No.

Date: 6/19/02

Heidi S. Nebel  
Heidi S. Nebel

### **NATURE OF ABANDONMENT**

3. In an office communication from the PTO dated December 12, 2001, the undersigned has noted that the above-identified application is being forwarded to the Abandoned files because the applicant's response to the Notice to File Missing Parts mailed on May 26, 2000, has not been received within the statutory period or any extension requested thereof.
4. The delay in the filing of the Notice to File Missing Parts for the above-identified application was unavoidable because applicants never received the Notice to File Missing Parts and have not yet received the Notice, as of June 5, 2002, even after a Status Inquiry on March 22, 2000.
5. Showings from the applicants as to the causes of the unavoidable delays are filed herewith; said showing establishes that the entire delay in filing the required reply from the due date for the reply until the filing of this petition was unavoidable. 37 CFR § 1.137(a)(3).

### **SMALL ENTITY STATUS OF APPLICANT**

6. It is confirmed that small entity status for this application has been checked and is still in effect.
7. The fee required by 37 § CFR 1.17(l) of **\$55.00** is also being paid as a condition of filing a petition for the revival of an unavoidably abandoned application.

### **ALTERNATIVE VENUE**

8. If revival is unavailable under 37 § CFR 1.137(a) applicants respectfully submit the Renewed Petition be considered under 37 § CFR 1.137(b) as unintentional. No fees or extensions of time are believed to be due in connection with this petition; however, consider this a request for any fee inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

### **AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY**

9. The Director is hereby authorized to charge any maintenance or surcharge fee to Account No. 26-0084 and credit any overpayments.

## REMARKS

The facts and circumstances presented show that although reasonable care was taken to respond to all Office communications, a response to the Notice to File Missing Parts was never filed because the Notice was never received by Applicants, even after a Status Inquiry was requested on March 22, 2001. Therefore, The Pennsylvania State University respectfully requests that revival of the abandoned application be accepted.

The attached exhibits set forth the factual basis for these remarks. The exhibits include attorney-client communications. These communications are presented solely for the purpose of supporting this petition, and the attorney-client privilege is in no way waived beyond the documents themselves, included within this petition.

The above-identified application received an Official Filing Receipt on May 26, 2000 giving the application a filing date of March 22, 2000. On March 22, 2001, a Status Inquiry was sent from Livinia N. Jones from McQuaide Blasko, Inc. (outside general counsel), requesting information on the application as none had yet been received since the Official Filing Receipt. On December 13, 2001, applicants received the Notice of Abandonment.

Reasonable care was used to inquire on the status of the application. In particular, The Pennsylvania State University internal docketing system was in place. The Pennsylvania State University Intellectual Property Office maintains a docketing system to provide reminders of expected Office Communications as well as deadlines from Office Actions. This docketing system was in place and functioned properly to provide a reminder that there had been no communication with the Office.

Ruth A. Harpster of The Pennsylvania State University Intellectual Property Office uses the Report Writer software program to run a report that will “tickle” or “diary” upcoming items that need to be attended to for patenting purposes such as Office Actions, IDS's, Assignments, etc. The software pulls the information from the D.E.A.L.S. Db<sub>TM</sub> database. This database shows critical dates for pending applications and issued patents and trademarks. The D.E.A.L.S. Db<sub>TM</sub> database was maintained by Ruth A. Harpster. Once these items are completed, Ruth A. Harpster manually enters the dates of completion to update the D.E.A.L.S. Db<sub>TM</sub> database. Critical dates for all patents and trademarks, including the above-identified application were placed on this system. Attached is a printout of the D.E.A.L.S. Db<sub>TM</sub> for this application. In the

top left-hand corner is the Tech ID, which is the internal number for The Pennsylvania State University Intellectual Property Office. In addition, the assignee, title of the invention, patent title, file date, country, serial number, application type and status are also included. As can be seen from the copy, the IDS was filed on March 22, 2000. A PCT filing deadline was March 22, 2001 but applicants elected not to file a PCT application. The D.E.A.L.S. Db™ print out also shows that a Status Inquiry was sent on March 22, 2001. No other correspondence from the USPTO except the Notice of Abandonment had been received. The Pennsylvania State University exercised reasonable care in maintaining the docketing system to ensure that no deadline would be missed. In addition, The Pennsylvania State University Intellectual Property Office and Ruth A. Harpster do attest that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(a) was unavoidable and under § 1.137(b) was unintentional.

On or about December 21, 2001, Ruth A. Harpster of The Pennsylvania State University Intellectual Property Office called Heidi S. Nebel, patent counsel at McKee, Voorhees & Sease (the law firm), regarding the Notice of Abandonment of the application. She indicated to Heidi S. Nebel that the Notice to File Missing Parts was never received and that a Status Inquiry had been sent on March 22, 2001 but nothing had been received. Thereafter, the law firm began to investigate this matter and in conjunction with Ruth A. Harpster and The Pennsylvania State University began preparation of this petition.

The facts of the matter indicate clearly that Ruth A. Harpster, The Pennsylvania State University Intellectual Property Office and the law firm exercised reasonable care to ensure the application was not abandoned. This included the docketing system that operated properly to show the deadlines of the correspondence or responses required by the USPTO.

At this point in time, it is not known why the Notice to File Missing Parts was not received by The Pennsylvania State University. Regardless, it is clear that not only was reasonable care exercised in the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(a) and under § 1.137(b) was unintentional., and not only did The Pennsylvania State University not intend to abandon the application, but also The Pennsylvania State University believed it was in compliance with all Office communications.

After receiving the Notice of Abandonment, a prompt and timely investigation was made in order to prepare this Petition for Revival. Therefore, The Pennsylvania State University respectfully petitions that the unavoidably delayed response to the Notice to File Missing Parts of application 09/532,687 be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Heidi S. Nebel", is written over the printed name.

Heidi S. Nebel, Reg. No. 37,719  
McKEE, VOORHEES & SEASE  
Attorneys of Record  
801 Grand Avenue, Suite 3200  
Des Moines, Iowa 50309-2721  
Phone No. (515) 288-3667  
Fax No. (515) 288-1338

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